



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OCT 19 1999

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

Cara Jablon, Esq.  
1300 I St. NW  
Washington D.C. 20005

Dear Ms. Jablon:

You have raised the question, in the litigation challenging the Phase 4 rule, if the so-called "uniquely associated" principle might ever be interpreted by the United States Environmental Protection Agency (EPA) so that lead-bearing wastes commonly processed by secondary lead smelters could be considered "uniquely associated" if processed by a primary lead smelter or by a lead beneficiation facility. Specifically, you question whether battery plates and groups, and similar post-consumer lead scrap materials, could be considered "uniquely associated" if processed by a primary metals facility.

The answer is no. The Bevill exclusion for the primary metal sector is limited to extraction/beneficiation wastes and 20 mineral processing wastes. Under Section 3001(b)(3)(A)(ii) of RCRA, the Bevill exclusion is available for "solid waste from the extraction, beneficiation and processing of ores and minerals." Under the Agency's longstanding interpretation, a waste must be "uniquely associated" with mining and processing of ores and minerals to be subject to the Bevill exclusion. The Agency currently uses a qualitative approach (see 45 FR 76619 and 54 FR 36623) to determine if a waste is uniquely associated. The Agency has not changed its application of the "uniquely associated" concept since 1989.

The "uniquely associated" concept only confers Bevill status on wastes from primary mineral extraction, beneficiation and processing of ores and minerals. Thus, to be "uniquely associated", a waste must, at the very least, come from a primary mineral processing operation, or from an extraction/beneficiation activity 63 FR 28578-79 (May 26, 1998).

The battery plates and groups, and related materials, which are your concern obviously are not uniquely associated for the simple reason that they are not generated by primary smelters or extraction/beneficiation facilities. They thus do not come from mining or mineral processing and hence, by definition, cannot be uniquely associated.

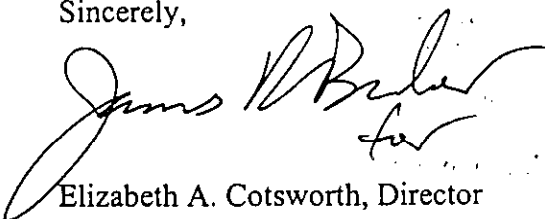
This letter does not answer when primary smelting or extraction/beneficiation facilities need RCRA permits if they were to store battery plates and groups and related materials

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(although storage permits would be required to the same extent as required for secondary lead smelters), whether smelting requires a RCRA air emissions permit (although see exemption in 40 CFR 266.100 (c)), and the effect (if any) such processing might have on the Bevill status of resulting wastes. These questions are answered by regulatory provisions other than the uniquely associated interpretive principle.

If you have any questions or need further assistance, please call Richard Kinch, Chief of the Industrial and Extractive Wastes Branch. He can be reached on (703) 308-8214.

Sincerely,

A handwritten signature in dark ink, appearing to read "Elizabeth A. Cotsworth", with a stylized flourish at the end.

Elizabeth A. Cotsworth, Director  
Office of Solid Waste